

STATE OF MICHIGAN
COURT OF APPEALS

JANICE PINER,

Plaintiff-Appellee,

v

RICHARD F. NAHABEDIAN and STAFFORD
REALTY & INVESTMENT CORPORATION,

Defendants-Appellants.

UNPUBLISHED

January 26, 2001

No. 215759

Wayne Circuit Court

LC No. 97-735543-CZ

Before: Cavanagh, P.J., and Talbot and Meter, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's entry of a default judgment in the amount of \$48,000 in favor of plaintiff after defendants and their attorney failed to appear at a settlement conference. We affirm.

Defendants raise three issues on appeal. Defendants claim that the trial court erred in entering a default judgment against them for defendants' failure to appear at the settlement conference, that the court abused its discretion in refusing to set aside the default judgment, and that defendants were entitled to a hearing on the amount of damages. Because defendants have failed to provide this Court with the necessary transcripts, they have effectively abandoned these issues.

Defendants failed to provide this Court with transcripts of both the September 23, 1998 and October 30, 1998 proceedings. On September 23, 1998, the trial court apparently heard testimony concerning plaintiff's damages and ordered the entry of a default and default judgment. The initial hearing on defendants' motion to set aside the default and default judgment took place on October 30, 1998. The hearing was adjourned until November 6, 1998, at which time the trial court heard the conclusion of the parties' arguments. After reviewing the lower court file, it is apparent that defense counsel only requested a transcript of the November 6, 1998 hearing from the court reporter. At the time of that request defense counsel also requested "testimony from the default hearing." MCR 7.210(B)(1)(a) provides:

The appellant is *responsible for securing the filing of the transcript* as provided in this rule [T]he appellant shall order from the court reporter or recorder the full transcript of testimony and other proceedings in the trial court or

tribunal. Once an appeal is filed in the Court of Appeals, a party must serve a copy of any request for transcript preparation on opposing counsel and file a copy with the Court of Appeals. [Emphasis added.]

Although defendants may have attempted to order transcripts of the testimony taken at the default hearing, the attempt was deficient. Defense counsel's request for transcripts asked the court reporter to provide testimony from the "default hearing," which was actually the truncated settlement conference, and the request failed to supply the date the proceedings took place. This is not a proper request for transcripts. Additionally, there is no indication that defense counsel made any attempt to ensure that the "requested" transcript was being prepared. As stated above, MCR 7.210(B)(1)(a) places the responsibility of securing the filing of the transcript on appellants. Furthermore, at no time did defendants request a transcript from the October 30, 1998 motion hearing which was adjourned until November 6, 1998. Even though the October 30 hearing was adjourned, it is apparent from comments made during the November 6 hearing that relevant arguments were made on October 30. Because the transcripts of the settlement conference and initial hearing on defendants' motion to set aside the default judgment have not been provided to this Court, defendants have abandoned their issues on appeal. *Taylor v Blue Cross & Blue Shield of Michigan*, 205 Mich App 644, 654; 517 NW2d 864 (1994). Accordingly, we affirm the trial court's entry of a default judgment and refusal to set aside this default judgment. *Kingston v Markward*, 134 Mich App 164, 176; 350 NW2d 842 (1984).

We further note that although defendants failed to provide this Court with the necessary transcripts, nothing in the limited record before us would allow us to hold that the trial court abused its discretion in entering a \$48,000 default judgment in favor of plaintiff or in refusing to set aside the default judgment on defendants' motion. Defendants failed to establish lack of notice of the settlement conference and therefore default judgment was appropriate under MCR 2.506(F)(6). Furthermore, defendants did not show good cause for their absence at the settlement conference, nor did they present evidence of a meritorious defense, both of which are required to set aside a default judgment. MCR 2.603(D)(1); *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 229; 600 NW2d 638 (1999); *Barclay v Crown Building and Development, Inc*, 241 Mich App 639, 653; 617 NW2d 373 (2000). Accordingly, the trial court properly refused to set aside the default judgment. Moreover, defendants' third issue was not preserved for appellate review because, based upon the lower court record and the transcript provided, defendants failed to request a hearing on damages or to object to the amount of damages the trial court awarded. *Cavulic v Boyer*, 195 Mich App 20, 24 n 2; 489 NW2d 124 (1992), citing *Bloemsma v Auto Club Ins Ass'n (On Remand)*, 190 Mich App 686, 692; 476 NW2d 487 (1991).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Michael J. Talbot

/s/ Patrick M. Meter